MISC. CRIMINAL APPLICATION NO. 2467 OF 1997.

Date of decision: 3.7.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. Yogesh Lakhani, advocate for the petitioners.
Mr. S.T. Mehta, A.P.P. for respondent No.1- State.
Respondent No.2 -served.

1. Whether Reporters of Local Papers may be allowed
        to see the judgment?   No

2. To be referred to the Reporter or not?   No

3. Whether their Lordships wish to see the fair copy
        of judgment?   No

4. Whether this case involves a substantial question
        of law as to the interpretation of the
        Constitution of India, 1950 or any order made
        thereunder?   No

5. Whether it is to be circulated to the Civil
        Judge?   No

    Coram: R.R.Jain,J.

    July 3, 1997.

Oral judgment:

Respondent No.2, a Public Limited Company, initiated
criminal proceedings against the present petitioners
under Section 138 of the Negotiable Instruments Act ('the
Act' for short hereinafter) by filing Criminal Case No.
1708/96 in the Court of learned Judicial Magistrate,
First Class (Second Court), Morbi for dishonour of cheque
No. 815872 dated 17.5.1996.   The Court below took

cognizance of the matter and issued process, Annexure 'U' under Section 138 of the Act. Aggrieved by the initiation of proceedings and issuance of process, the petitioners/original accused have filed this petition under Section 482 of the Criminal Procedure Code ('the Code' for short) for quashing of proceedings and process in exercise of inherent powers.

Despite service of process the respondent No.2/original complainant has not appeared to oppose on merits.

Mr. Lakhani, learned advocate for the petitioners, has fairly conceded that the cheque in question was drawn by the petitioners in favour of complainant- the payee from a bank account maintained with the banker; the cheque was not honoured on presentation; the respondent No.2 did serve notice within the stipulated period and that the complaint has been filed within one month as required under law. With these undisputed facts, Mr. Lakhani has forcefully argued that the cheque in question was never given in discharge of liability or dues.

On reading of Section 138 of the Act, it clearly transpires that with a view to bring a case within the parameters of this Section, while satisfying other ingredients, the cheque ought to have been given in discharge of liability or debt. Right from the initial stage, it is the case of petitioner that the cheque in question was given by mistake towards the payment of goods supplied under Bill Nos. 199 and 212. Document Annexure 'S' dated 3.9.1996 is the reply to the notice given by respondent No.2. In that reply itself the present petitioners have made clear that the cheque was not issued for discharge of liability or debt but was given under mistake, though the payment had already been made earlier. On the face of it there is nothing on record that the cheque was given by the petitioners in discharge of liability or debt hence in my view cannot give rise to any criminal liability as contemplated under Section 138 of the Act.

Apart from these facts, Annexure 'P', letter addressed by petitioners to respondent No.2 requesting not to present the cheque as has not been given in discharge of liability or debt, takes out the case from the ambit of Section 138 of the Act as intimation was given before presentation of the cheque. In this regard, Mr. Lakhani has relied upon a judgment in the case of M/s. Electronics Trade & Technology Development Corporation Limited v. M/s. Indian Technologists & Engineers (Electronics) Private Limited, reported in JT 1996 (1) SC

643 ((1996) 2 SCC page 739).

For the reasons stated above, the proceeding cannot be continued as apparently is barred under Section 138 of the Act. Consequently, continuance thereof would be abuse of process of Court. Therefore, the process deserves to be quashed and set aside.

In the result, the petition is allowed. Criminal Case No. 1708/96 pending in the Court of learned Judicial Magistrate, First Class (Second Court), Morbi, Annexure 'T' and issuance of process, Annexure 'U' dated 28.1.1997 are hereby quashed. Rule is made absolute.